

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) CE10967JI016
I hereby certify that this correspondence is being electronically transmitted on the date listed below [(37 CFR 1.8(a))]. on: <u>October 28, 2008</u> Signature <u>/Silvana Wiltshire/</u> <u>Silvana Wiltshire</u> Typed or printed name	Application Number 10/607,760 First Named Inventor Marc A. Boillot Art Unit 2626	Filed June 27, 2003 Examiner Wozniak, James S
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheets(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> <input type="checkbox"/> applicant inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Registraton number <u>45,834</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34: _____ </div> <div style="width: 45%; text-align: right;"> <u>/Larry G. Brown/</u> Signature <u>Larry G. Brown</u> Typed or printed name <u>(954) 723-6449</u> Telephone number <u>October 28, 2008</u> Date </div> </div> <p style="margin-top: 20px;">NOTE: Signatures of all the inventors or assignees or record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, se below*</p>		
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.		

(SB/33 (07-05))

UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Marc A. Boillot GROUP ART UNIT: 2626
APPLN. NO.: 10/607,760 EXAMINER: Wozniak, James S
FILED: June 27, 2003 Confirmation No. 7406
TITLE: PSYCHOACOUSTIC METHOD AND SYSTEM TO IMPOSE A
PREFERRED TALKING RATE THROUGH AUDITORY
FEEDBACK RATE ADJUSTMENT

CERTIFICATE UNDER 37 CFR 1.8(a)	
I hereby certify that this correspondence is being electronically transmitted on the date listed below:	
Date:	October 28, 2008
Signature	/Silvana Wiltshire/
Typed or printed name:	Silvana Wiltshire

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop: **AF**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants request review of the Non-Final Office Action mailed May 27, 2008, relating to the above-identified application and in furtherance of the Notice of Appeal filed on October 28, 2008.

Concurrently with this submission, Applicants are also paying a fee for a three months Extension of Time.

Claims 1-22 are pending in the application, the latest version of which can be found in Applicants' Response of February 26, 2008. In the Office Action, claims 17-22 were rejected under 35 U.S.C. 112, first paragraph, as failing to

comply with the written description requirement. In addition, claims 1-16 were rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements. Claims 1-4, 7, 10-13 and 17-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0179676 to Okuda, et al. (Okuda) in view of U.S. Patent No. 5,717,818 to Nejime, et al. (Nejime). In addition, claims 6 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Okuda in view of Nejime and further in view of U.S. Patent No. 6,278,387 to Rayskiy (Rayskiy). Finally, claims 5, 8, 9, 14-16 and 21 were rejected under 35 U.S.C. 103(a) as being unpatentable over Okuda in view of Nejime and further in view of U.S. Patent No. 5,717,823 to Klejin (Klejin).

35 U.S.C. 112, First Paragraph and Claims 17-22

Claims 17-22 recite a program storage device tangibly embodying a set of programming instructions for executing on a communication unit. Applicants respectfully disagree with the Examiner's assertion that an issue of new matter should be raised in response to the terms "program storage device" and "tangibly embodied." These terms are well known in the art of computer programming, and the specification clearly conveys to one of skill in this art that Applicants were in possession of such claimed subject matter. In particular, the specification notes that a program is for execution on a computer system (see page 8, lines 8-10). One of skill in the art would certainly appreciate that a program must be written to some sort of storage unit to allow for execution in a computer system that contains such a storage unit. The term "tangibly embodied" is a simple, well-known and

well-accepted phrase that is used in these types of claims to recite the process of moving executable code to a storage unit, and there is clear support for it in this specification.

Moreover, the specification states that a program may be stored on a computer readable medium *or other storage medium* (see page 8, lines 14-16). One of skill in the art would appreciate that a program storage device, a term that is well-known and accepted in the art, falls within the scope of a storage medium. Thus, Applicants submit that the specification provides support for this term and respectfully request withdrawal of the 112 rejection.

35 U.S.C. 112, Second Paragraph and Claims 1-16

In this 112, second paragraph, rejection, the Examiner refers to MPEP 2172.01 for support. In that section, it is clearly stated that a claim that omits matter disclosed to be essential to the invention as described in the specification may be rejected under 35 U.S.C. 112, *first* paragraph, as not enabling. Even ignoring the reference to the wrong paragraph, this rejection cannot stand. Claim 1 is directed to a telephone handset of a calling party in which an audio loopback path on the handset of the calling party plays audio at a loopback rate to the calling party to impose an altered talking rate on the calling party in which the loopback rate is selected by another party. Because the rate is selected by another party to the call, no essential matter is omitted here because the control for selecting this rate is located at the communication device operated by the other party. This claim does not attempt to claim this second communication device. Moreover, even though independent claim 10 does claim two separate

handsets, the specification of the current invention does not describe any particular structure of controlling this rate variable as being critical.

Independent Claims 1, 10 and 17

Independent claim 1 recites the limitation of a telephone handset that includes an audio input module that receives audio from a user speaking at an undesired speaking rate, an audio output module that renders audio to the user and an audio loopback path that presents audio at a loopback rate based on a selectable rate variable selected by another party to impose an altered talking rate on the user speaking at the undesired speaking rate. Independent claims 10 and 17 recite similar subject matter.

In rejecting these claims, the Examiner concludes that Okuda describes an audio loopback path that presents audio at a loopback rate based on a selectable rate variable to a user speaking at an undesired rate to impose an altered talking rate on the user speaking at the undesired speaking rate. Applicants respectfully disagree with the Examiner. Okuda actually explains that the telephone set includes an echo canceller **6** that is provided in the preceding stage of a voice speed converting unit **5** “to prevent the voice of the *calling party* which has been inputted from the microphone **1** *from being subjected to voice speed conversion and outputted from the loudspeaker 2.*” (emphasis added) (see paragraph 0043). As such, it is clear that Okuda provides a scheme that prevents the rate of the calling party’s voice from being altered, which contradicts the desired result of the claimed invention, an imposition on the calling party to cause that party to change his/her speaking rate. Further, this structure in Okada teaches away from

incorporating any concepts from other references that call for altering a calling party's voice that is fed back to the calling party through a speaker output.

Conclusion

In view of the above, Applicants contend that the claims are patentable over the cited prior art references. Reconsideration and withdrawal of the rejection of the claims is respectfully requested. Passing of this case is now believed to be in order, and a Notice of Allowance is earnestly solicited.

The Commissioner is hereby authorized to charge any necessary fee, or credit any overpayment, to Motorola, Inc. Deposit Account No. 50-2117.

Respectfully submitted,

Date: October 28, 2008

By: /Larry G. Brown/
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